

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

U.S. SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

V.

EQUITYBUILD, INC., EQUITYBUILD
FINANCE, LLC, JEROME H. COHEN,
and SHAUN D. COHEN

Defendants.

Case Action No. 18 CV 5587

Judge Manish S. Shah

Magistrate Judge Young B. Kim

NOTICE OF CLAIMANTS, SHATAR CAPITAL INC. a/k/a SHATAR CAPITAL PARTNERS, 1111 CREST DR., LLC, ABRAHAM AARON EBRIANI, HAMID ISMAIL, AND FARSA, INC. MOTION FOR LEAVE TO TAKE FURTHER DISCOVERY

Claimants, Shatar Capital, Inc., a/k/a Shatar Capital Partners, 1111 Crest Dr., LLC, Abrahm Aaron Ebriani, Hamid Ismail and Farsaa, Inc. (collectively, “Shatar”), by their attorney, Willaim D. Cherny of the Cherny Law Offices, P.C., pursuant to the Court’s Order Regarding Claims Resolution Process No. 2 (Dkt. 941) and the schedule set by the Court regarding Group 2 as amended (Dkt. 1532) requests leave to take further discovery on the Receiver’s Group 2 Disclosure (Dkt. 1537) In support thereof states as follows:

1. Shatar is an Institutional Lender whose secured claim on two different properties to be adjudicated in Group 2 in the claims process, 5450 S. Indiana (the “Indiana” property) and 7749 S. Yates (the “Yates” property). There are a significant number of competing claims to these 2 properties by Investor-Lenders. (Dkt. 1535, Ex. 5)

2. On May 15, 2023, this Court entered an Order Regarding Summary Proceedings for Group 2 (Dkt. 1476). On September 12, 2023, this Court entered a minute entry extending fact

discovery deadline as to Group 2 to October 25, 2023. Disclosure as to the avoidance claims was due November 8, 2023 with Notice of Claimants requesting further discovery as to the avoidance disclosure due November 15, 2023. (Dkt.1532)

3. After being allowed to take significant discovery the Receiver filed his disclosure of an avoidance claim on November 8, 2023. (Dkt. 1537). The Receiver alleges that the two properties that are the subject of the security interest given by EquityBuild, Inc. to Shatar (Indiana and Yates), constitute voidable fraudulent transfers under the Illinois Fraudulent Transfer Act, 740 ILCS 160 (“Act”), or are otherwise voidable under some undisclosed applicable law. The Receiver further acknowledges that “if the investor lenders’ mortgages are deemed to be in the first position, the fraudulent conveyance issues to which this disclosure relates will essentially be moot and neither the participants nor the Court should devote time or expense to the matter.” (*Id.* at 2)

4. The Act requires the Receiver to prove, among other things, that EquityBuild made a transfer or incurred an obligations “with actual intent to hinder, delay, or defraud any creditor of the debtor...”. 740 ILCS 160/5(1). In addition, even if the Receiver were to prove a fraudulent transfer, Shatar’s security interest would remain valid if it accepted the security interest in good faith and for reasonably equivalent value. 740 ILCS 160/9(a).

5. The Receiver alleges, via hearsay and conjecture, that Shatar was aware of numerous “facts” that would have led a reasonable person to inquire further into the validity of the grants of security interests (Dkt 1537, at 3). Although the Receiver alleges what he believes to be “facts” that would have led a reasonable person to inquire further, he fails to adequately show how an inquiry of those “facts” would have revealed that EquityBuild was engaged in fraud. (Dkt. 1537 at 5-10)

6. Through this request for further discovery, Shatar requests a period of 60 days to

take the depositions of EquityBuild investor, Doron Kermanian, and serve additional discovery requests on the Receiver for disclosure of any other EquityBuild investor for whom the Receiver believes have claims representative to those of Kermanian in the Indiana and Yates properties.

7. Shatar further requests that it be granted leave to serve interrogatories and supporting document requests on the Receiver to learn the evidence the Receiver believes he has to support all of the elements of the newly disclosed claim under the Act. The focus on the discovery would be that a further inquiry into bullet point “facts” would have revealed that EquityBuild was engaged in fraud on the investor lenders of the Indiana and Yates properties. (Dkt. 1537, at 5-12)

8. The discovery requests of Shatar should be allowed as denying the request would deprive Shatar of its due process rights, particularly given that the Receiver was permitted to plead his claim after engaging in discovery.

WHEREFORE, Claimants, Shatar Capital, Inc., a/k/a Shatar Capital Partners, 1111 Crest Dr., LLC, Abrahm Aaron Ebriani, Hamid Ismail and Farsaa, Inc. respectfully requests this Court grant their request for leave to take further discovery on the Receiver’s avoidance disclosure; allowing 60 days for such discovery and such further relief as this court deems just and proper.

Dated: November 15, 2023

Respectfully submitted,

Shatar Capital, Inc., a/k/a Shatar Capital Partners, 1111 Crest Dr., LLC, Abrahm Aaron Ebriani, Hamid Ismail and Farsaa, Inc.

By: /s/William D. Cherny
Their attorney

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CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2023, I served the foregoing **Notice Of Claimants, Shatar Capital Inc. A/K/A Shatar Capital Partners, 1111 Crest Dr., LLC, Abraham Aaron Ebriani, Hamid Ismail, and Farsaa, Inc. Motion For Leave To Take Further Discovery** electronically via the Court's ECF system on all counsel of record and all members of Claims Group 2 by email to the distribution list at ebgroup2@rdaplawn.net

/s/William D. Cherny

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